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FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

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Jun 06, 2025

SEAN F. MCVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

No. 2:24-CV-00423-SAB

In re:
AGNES NICZYPORUK,
Debtor.

ORDER DISMISSING APPEAL

On December 18, 2024, Debtor/Appellant Agnes Niczyporuk filed a Notice of Appeal, appealing the bankruptcy court's order overruling her Amended Objection to Proof of Claim 5-1. Ms. Niczyporuk is representing herself in this matter. Secured creditor U.S. Bank National Association as Trustee for LB-IGLOO SERIES IV TRUST, its successors and/or assigns ("USB") is represented by Eric Marshack.

Background Facts

The following background facts are set forth in the bankruptcy court's order.

On or about February 25, 2008, Agnes Niczyporuk and Jaroslaw Niczyporuk executed a promissory note in favor of Countrywide Bank, FSB, to refinance the mortgage on their home located at 1315 N. Dunbarton Oaks Lane, Liberty Lake, WA ("Property"). They secured the loan with a deed of trust in favor of

1 Countrywide Home Loans, Inc. and listed Mortgage Electronic Registration
2 Systems, Inc. (MERS) as nominee. In 2009, the Niczporuks stopped paying their
3 mortgage and failed to obtain a loan modification. In 2011, MERS assigned the
4 Niczyporuks' deed of trust to Bank of America, N.A. ("BofA"). That same year,
5 the Niczyporuks filed their first chapter 7 bankruptcy and scheduled an undisputed
6 secured debt of \$440,000 in favor of BofA. The Niczyporuks stated they intended
7 to reaffirm the mortgage debt and did not dispute the validity of the loan or deed of
8 trust. The Niczyporuks received their first bankruptcy discharge in 2012.

9 In 2015 BofA assigned the Niczyporuks' deed of trust to Ventures Trust
10 2013-I-H-R ("Ventures"). After Ventures scheduled a trustee's sale in 2016, the
11 Niczyporuks sued BofA, Ventures, and others in state court to stop the foreclosure.
12 In that suit, the Niczyporuks challenged the validity of multiple assignments of the
13 deed of trust and questioned if Ventures possessed the original Note. In 2017, the
14 parties agreed to dismiss the case with prejudice.

15 Ventures assigned the Niczyporuks' deed of trust to Wilmington Savings
16 Fund Society, FSB, who agreed to modify the Niczyporuks' loan in July 2019. The
17 Niczyporuks made no payments on the loan after August 2019.

18 In 2020, Wilmington Savings Fund Society, FSB assigned the deed of trust
19 to DLJ Mortgage Capital, Inc., who assigned the Niczyporuks' deed of trust to
20 U.S. Bank in 2023.

21 U.S. Bank appointed Michelle Ghidotti as successor trustee and scheduled a
22 trustee's sale for March 24, 2023. In March 2023, the Niczyporuks sued Michelle
23 Ghidotti in state court to stop the foreclosure on the Property. Two days prior to
24 the scheduled sale, Agnes Niczyporuk filed a chapter 13 bankruptcy petition. After
25 the Trustee and U.S. Bank objected to confirmation, Ms. Niczyporuk voluntarily
26 converted her chapter 13 case to chapter 7 and amended her schedules.

27 On May 10, 2023, Ms. Niczyporuk filed an adversary lawsuit against U.S.
28 Bank, U.S. Bank National Association, Michelle Ghidotti, and others seeking in

1 relevant part: (1) injunctive relief against foreclosure; (2) declaratory judgments
2 that Debtor's loan obligations is unenforceable; and (3) damages for alleged fraud,
3 violations of the stay in the 2012 case, and (4) violations of state law.

4 On September 11, 2023, after converting U.S. Bank's Motion to Dismiss the
5 adversary lawsuit to a Motion for Summary Judgment, the bankruptcy court
6 granted the motion in the adversary case and dismissed Ms. Niczyporuk's
7 complaint with prejudice. On September 14, 2023, the bankruptcy court granted
8 U.S. Bank's motion for relief from stay.

9 Ms. Niczyporuk filed a Motion for Reconsideration, asserting there were
10 questions of fact regarding the location of the original note and the ownership of
11 her loan. The bankruptcy court denied her motion. The Bankruptcy Appellate
12 Panel of the Ninth Circuit affirmed the bankruptcy court's order.

13 On November 14, 2024, Ms. Niczyporuk filed an Amended Objection, in
14 which she again disputed the validity of U.S. Bank's claim. She argued she was
15 denied her constitutional rights because the bankruptcy court failed to properly
16 consider her objection to U.S. Bank's claim.

17 The bankruptcy court relied on the claims preclusion doctrine to overrule
18 Ms. Niczyporuk's objection. It noted Ms. Niczyporuk was advancing arguments
19 essentially identical to those previously raised and rejected by the bankruptcy court
20 and Bankruptcy Appellate Panel, she offered no new evidence or substantive
21 allegations of fraud and failed to raise any issues that were not already rejected on
22 appeal. Ms. Niczyporuk is appealing that Order.

23 Standard of Review

24 A district court has jurisdiction to hear an appeal from a bankruptcy court.
25 28 U.S.C. § 158. "On an appeal the district court or bankruptcy appellate panel
26 may affirm, modify, or reverse a bankruptcy judge's judgment, order, or decree or
27 remand with instructions for further proceedings." Fed. R. Bankr. P. 8013.
28 When examining an appeal, a district court uses the same standard of review that a

1 circuit would use when reviewing a district court's decision. See *In re Baroff*, 105
2 F.3d 439, 441 (9th Cir. 1997). A bankruptcy court's order overruling objections is
3 reviewed for abuse of discretion. *In re Medina*, 2020 WL 885967 (9th Cir. BAP
4 2020).

5 A bankruptcy court abuses its discretion if it applies the wrong legal
6 standard, misapplies the correct legal standard, or makes factual findings that are
7 illogical, implausible, or without support in the record. *United States v. Hinkson*,
8 585 F.3d 1247, 1261-62 (9th Cir. 2009) (en banc).

9 Analysis

10 The bankruptcy court did not abuse its discretion in finding that U.S. Bank's
11 proof of claim was valid. The bankruptcy court properly found Debtor/Appellant's
12 arguments before the bankruptcy court were identical to those previously raised,
13 considered and rejected by the courts, including the constitutional claims and
14 challenges to standing, and therefore were barred by claim preclusion. Courts have
15 consistently held that U.S. Bank Trust maintained possession of the original note
16 and it was not required to present the original note to prove possession. Finally, it
17 appears the issue of proof of claims in the bankruptcy proceedings is moot, given
18 the sale of the property in question. See *In re Royal Properties, Inc.*, 621 F.2d 984,
19 986 (9th Cir. 1980) ("Once the orders have been performed, an appeal attacking
20 the order is moot). Even if the Court were to grant Ms. Niczyporuk's requested
21 relief, it would be an advisory opinion upon a moot question.

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1 Accordingly, **IT IS HEREBY ORDERED:**

2 1. Debtor/Appellant's Appeal is **DISMISSED**, with prejudice.

3 2. Debtor/Appellant's Motion for Judicial Notice of Transcript

4 Correction Appeal (Case No. 2:25-cv-00179-TOR), ECF No. 13, is **DENIED**, as
5 moot.

6 3. Debtor/Appellant's Pro Se Motion for Electronic Case Filing

7 Authorization, ECF No. 14, is **DENIED**, as moot.

8 4. The Clerk of Court is directed to enter judgment in against

9 Debtor/Appellant and in favor of Appellees.

10 **IT IS SO ORDERED.** The Clerk of Court is directed to enter this Order,

11 forward copies to Plaintiff and counsel and **close** the file.

12 **DATED** this 6th day of June 2025.

A handwritten signature in blue ink that reads "Stan Bastian".

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14 Stan Bastian
15 Chief United States District Judge
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